

LEGISLATIVE BILL 539

Approved by the Governor April 27, 2017

Introduced by Krist, 10.

A BILL FOR AN ACT relating to the Office of Inspector General of the Nebraska Correctional System Act; to amend sections 47-901, 47-905, and 47-912, Revised Statutes Cumulative Supplement, 2016; to change and eliminate provisions relating to investigations; to authorize the public release of certain reports as prescribed; to prohibit certain personnel actions against employees; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 47-901, Revised Statutes Cumulative Supplement, 2016, is amended to read:

47-901 Sections 47-901 to 47-919 and section 4 of this act shall be known and may be cited as the Office of Inspector General of the Nebraska Correctional System Act.

Sec. 2. Section 47-905, Revised Statutes Cumulative Supplement, 2016, is amended to read:

47-905 (1) The office shall investigate:

(a) Allegations or incidents of possible misconduct, misfeasance, malfeasance, or violations of statutes or of rules or regulations of the department by an employee of or a person under contract with the department or a private agency; and

(b) Death or serious injury in private agencies, department correctional facilities, and other programs and facilities licensed by or under contract with the department. The department shall report all cases of death or serious injury of a person in a private agency, department correctional facility or program, or other program or facility licensed by the department to the Inspector General as soon as reasonably possible after the department learns of such death or serious injury. The department shall also report all cases of the death or serious injury of an employee when acting in his or her capacity as an employee of the department as soon as reasonably possible after the department learns of such death or serious injury. The department shall also report all cases when an employee is hospitalized in response to an injury received when acting in his or her capacity as an employee of the department as soon as reasonably possible after the department learns of such hospitalization. For purposes of this subdivision, serious injury means an injury which requires urgent and immediate medical treatment and restricts the injured person's usual activity or illness caused by malfeasance or misfeasance which leaves a person in critical or serious condition.

(2) Any investigation conducted by the Inspector General shall be independent of and separate from an investigation pursuant to sections 23-1821 to 23-1823.

(3) Notwithstanding the fact that a criminal investigation, a criminal prosecution, or both are in progress, all law enforcement agencies and prosecuting attorneys shall cooperate with any investigation conducted by the Inspector General and shall, immediately upon request by the Inspector General, provide the Inspector General with copies of all law enforcement reports which are relevant to the Inspector General's investigation. All law enforcement reports which have been provided to the Inspector General pursuant to this section are not public records for purposes of sections 84-712 to 84-712.09 and shall not be subject to discovery by any other person or entity. Except to the extent that disclosure of information is otherwise provided for in the Office of Inspector General of the Nebraska Correctional System Act, the Inspector General shall maintain the confidentiality of all law enforcement reports received pursuant to its request under this section. Law enforcement agencies and prosecuting attorneys shall, when requested by the Inspector General, collaborate with the Inspector General regarding all other information relevant to the Inspector General's investigation. If the Inspector General in conjunction with the Public Counsel determines it appropriate, the Inspector General may, when requested to do so by a law enforcement agency or prosecuting attorney, suspend an investigation by the office until a criminal investigation or prosecution is completed or has proceeded to a point that, in the judgment of the Inspector General, reinstatement of the Inspector General's investigation will not impede or infringe upon the criminal investigation or prosecution. ~~Under no circumstance shall the Inspector General interview any person who has already been interviewed by a law enforcement agency in connection with a relevant ongoing investigation of a law enforcement agency.~~

Sec. 3. Section 47-912, Revised Statutes Cumulative Supplement, 2016, is amended to read:

47-912 (1) Reports of investigations conducted by the office shall not be distributed beyond the entity that is the subject of the report without the consent of the Inspector General.

(2) The office shall redact confidential information before distributing a report of an investigation. The office may disclose confidential information to

the chairperson of the Judiciary Committee of the Legislature when such disclosure is, in the judgment of the Public Counsel, desirable to keep the chairperson informed of important events, issues, and developments in the Nebraska correctional system.

(3)(a) A summarized final report based on an investigation may be publicly released in order to bring awareness to systemic issues.

(b) Such report shall be released only:

(i) After a disclosure is made to the chairperson pursuant to subsection (2) of this section; and

(ii) If a determination is made by the Inspector General with the chairperson that doing so would be in the best interest of the public.

(c) If there is disagreement about whether releasing the report would be in the best interest of the public, the chairperson of the Executive Board of the Legislative Council may be asked to make the final decision.

(4) ~~(3)~~ Records and documents, regardless of physical form, that are obtained or produced by the office in the course of an investigation are not public records for purposes of sections 84-712 to 84-712.09. Reports of investigations conducted by the office are not public records for purposes of sections 84-712 to 84-712.09.

(5) ~~(4)~~ The office may withhold the identity of sources of information to protect from retaliation any person who files a complaint or provides information in good faith pursuant to the Office of Inspector General of the Nebraska Correctional System Act.

Sec. 4. Any person who has authority to recommend, approve, direct, or otherwise take or affect personnel action shall not, with respect to such authority:

(1) Take personnel action against an employee because of the disclosure of information by the employee to the office which the employee reasonably believes evidences wrongdoing under the Office of Inspector General of the Nebraska Correctional System Act;

(2) Take personnel action against an employee as a reprisal for the submission of an allegation of wrongdoing under the act to the office by such employee; or

(3) Take personnel action against an employee as a reprisal for providing information or testimony pursuant to an investigation by the office.

Sec. 5. Original sections 47-901, 47-905, and 47-912, Revised Statutes Cumulative Supplement, 2016, are repealed.

Sec. 6. Since an emergency exists, this act takes effect when passed and approved according to law.